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# TRANSCRIPT OF RECORD

## Supreme Court of the United States

OCTOBER TERM, 1936 7

No. ~~830~~ 15

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ARTHUR G. BOGARDUS, PETITIONER,

*vs.*

COMMISSIONER OF INTERNAL REVENUE

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

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PETITION FOR CERTIORARI FILED MARCH 20, 1937.

CERTIORARI GRANTED APRIL 26, 1937.

# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1936

# No. 830

ARTHUR G. BOGARDUS, PETITIONER,

*vs.*

COMMISSIONER OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

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[fol. 1]

**BEFORE UNITED STATES BOARD OF TAX APPEALS**

Docket No. 77,226

ARTHUR G. BOGARDUS, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE, Respondent

DOCKET ENTRIES

Appearances:

For Taxpayer: Arthur M. Kracke (withdrawn); Merlin A. Muth, Esq.; Douglas L. Hatch, Esq.; Richard H. Wilmer; L. G. Sutherland, Esq.

For Commissioner: W. B. Davis, Esq.; Stanley B. Anderson, Esq.

1934.

Aug. 21.—Petition received and filed. Taxpayer notified. (Fee paid.)

" 22.—Copy of petition served on General Counsel.

Sept. 28.—Answer filed by General Counsel.

Oct. 10.—Copy of answer served on taxpayer.

1935.

Jan. 10.—Hearing set February 7, 1935.

" 12.—Notice of appearance of Merlin A. Muth as counsel, filed.

" 12.—Motion for circuit hearing at Chicago, filed by taxpayer. January 14, 1935, granted.

Sept. 30.—Motion to consolidate with dockets 74,916-18, 75,822, 75,875-83, 75,921, 76,228-30, for hearing November 7, 1935, filed by taxpayer. October 1, 1935 granted.

[fol. 2]

Oct. 1.—Hearing set November 7, 1935.

Nov. 2.—Notice of appearance of Richard H. Wilmer as counsel filed.

" 4.—Notice of withdrawal of A. M. Kracke as counsel, filed, and granted.

DOCKET ENTRIES—Continued

1935.

Nov. 7.—Hearing had before Mr. Smith. Submitted. Motion to dismiss in 76,229 held C. A. V. Stipulation of facts filed. Petitioner's brief due December 16, 1935, Commissioner's brief due February 1, 1936, petitioner's reply February 15, 1936.

" 13.—Transcript of hearing November 7, 1935 filed.

Dec. 14.—Brief filed by taxpayer. December 16, 1935 copy served.

1936.

Jan. 30.—Memorandum reply brief filed by General Counsel.

Feb. 15.—Reply brief filed by taxpayer. February 15, 1936 copy served.

Apr. 30.—Memorandum findings of fact and opinion rendered, Mr. Smith No. 5. Judgment will be entered for Commissioner.

" 30.—Decision entered—Mr. Black, Division 15.

July 8.—Motion to fix bond in the amount of $150.00 filed by taxpayer and granted.

" 23.—Supersedeas bond in the amount of $169.56 approved and ordered filed.

" 27.—Petition for review by United States Circuit Court of Appeals, Second Circuit, with assignments of error filed by taxpayer.

" 27.—Proof of service filed by taxpayer.

[fol. 3]

Aug. 19.—Notice of the appearance of Douglas L. Hatch, counsel for taxpayer.

Sept. 1.—Copy of order from Second Circuit re physical exhibit filed.

" 15.—Agreed statement of evidence lodged.

" 15.—Præcipe filed.

" 15.—Proof of service filed.

" 16.—Agreed statement of evidence approved and ordered filed.

" 25.—Order enlarging time for transmission and delivery of record to November 9, 1936, entered.

BEFORE UNITED STATES BOARD OF TAX APPEALS

[Title omitted]

PETITION—Filed August 21, 1934

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency [fol. 4] (IT:AR:A-2-KVN-90D), dated June 28, 1934, and as a basis of his proceeding allges as follows:

(1) The petitioner is an individual with address at 17 Overlook Terrace, Larchmont, New York.

(2) The notice of deficiency (a copy of which is attached and marked Exhibit A) was mailed to the petitioner on or about June 28, 1934.

(3) The taxes in controversy are income taxes for the calendar year 1931 and for eighty-four dollars, sixty-three cents ($84.63).

(4) The determination of tax set forth in said notice of deficiency is based upon the following errors:

(a) The Commissioner of Internal Revenue erred in including as a part of petitioner's taxable income for the year 1931 the amount of $10,000.00 alleged to be compensation received from Unopco Corporation.

(b) The Commissioner of Internal Revenue erred in asserting a penalty of 25% for failure to file an income tax return within the time prescribed by law.

(5) The facts upon which the petitioner relies as the basis of his proceeding are as follows:

[fol. 5] (a) During the year 1931 the petitioner received from Unopco Corporation the amount of $10,000.00 alleged by the Commissioner of Internal Revenue to be income of the petitioner.

(b) The said amount of $10,000.00 received by the petitioner was a gift and not compensation as alleged by the Commissioner of Internal Revenue.

(c) During the year 1931 petitioner received $807.50 of taxable income, exclusive of the gift described above, and had deductions of $1,458.04 as shown in the attached notice of deficiency (Exhibit A), and petitioner was not required